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September 11, 1990

The Honorable Bill English
Arizona State Representative
State Capitol, House Wing
1700 West Washington
Phoenix, AZ 85007

Re: I90-076 (R88-039)

Dear Representative English:

You have asked for an interpretation of the word "transmittal" in the context of that portion of A.R.S. § 16-905(I)(6) which prohibits individuals and campaign committees from "collect[ing] contributions from members of an organization for transmittal to a candidate." You then specifically asked whether this prohibition would apply in three hypothetical situations.

A.R.S. § 16-905(I)(6) provides:

An individual or campaign committee¹ shall not make a contribution

¹/"'Campaign committee' includes the state central committee or state committee of any political party, any county, city, town or precinct committee of any political party or of a candidate, and any association or combination of persons organized, conducted or combined for the purpose of influencing the result of any election in this state or in any county, city, town or precinct in this state, notwithstanding that the association or combination of persons may be part of a larger association or combination of persons not primarily organized, conducted or combined for the purpose of influencing the result of any election in this state or in any county, city, town or precinct in this state." A.R.S. § 16-901(1).

to a candidate^{2/} through another individual or campaign committee, use economic influence to induce members of an organization to make contributions to a candidate, collect contributions from members of an organization for transmittal to a candidate, make payments to candidates for public appearances or services which are ordinarily uncompensated or use any similar device to circumvent the intent of this section.

(Emphasis added). In interpreting the term "transmittal" in this provision, we previously stated in Ariz. Att'y Gen. Op. 187-039 that the word "transmittal" ". . . arguably suggests a pass-through situation." This interpretation is consistent with the principle of statutory construction that "words and phrases in statutes should be given their ordinary meaning unless it appears from context or otherwise that a different meaning is intended." State v. Wise, 137 Ariz. 4568, 470 n. 3, 671 P.2d 909, 911 n.3 (1983) citing, McIntyre v. Mohave County, 127 Ariz. 317, 620 P.2d 696 (1980); see also, A.R.S. § 1-213. The ordinary meaning of the word "transmit" is "to cause to go or be conveyed to another person or place . . . to pass on" Webster's Third New International Dictionary 2429 (1976). However, not all transmittals of contributions from members of an organization violate A.R.S. § 16-905(I)(6).

It is clear that a literal reading of the first prohibition in A.R.S. § 16-905(I)(6) without modification by the clause "to circumvent the intent of this section," would prohibit the most basic function of campaign committees. We rejected such an absurd construction in Ariz. Att'y Gen. Op. 187-039 wherein we stated:

This statutory language can be interpreted in more than one way. If it is construed as either barring PAC [Political Action Committee] contributions to candidates

^{2/}"Candidate" means an individual who receives or gives consent for receipt of a contribution for his nomination for or election to any office in this state other than a federal office. Candidate includes a personal campaign committee designated or authorized by the individual to receive contributions or make expenditures on his behalf." A.R.S. § 16-905(O)(1).

or contributions to PACs, it would conflict with other portions of the statute which plainly allow such activity (i.e., subsections A.2, B.2, D and G). It would also infringe protected First Amendment speech and association rights. See eg. FEC v. National Conservative PAC, [470] U.S. [480], 105 S.Ct. 1459, [84] L.Ed.2d [455] (1985) ("NCPAC") (holding that PACs have full First Amendment rights). The rules of statutory construction therefore argue against such an interpretation. See State v. Standsberry, 114 Ariz. 351, 560 P.2d 1258 (1976) (Construction must look to the statute as a whole to give harmonious effect to all sections); and Arizona Downs v. Arizona Horsemen's Foundation, 130 Ariz. 550, 637 P.2d 1053 (1981) (Court, wherever possible, should adopt a construction which will render the statute constitutional.)³

The protected freedoms of political expression and association can constitutionally be restricted to prevent "corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and their actions if elected to office" by placing limits on contributions. Buckley v. Valeo, 424 U.S. 1, 26, 96 S.Ct. 612, 638, 46 L.Ed 2d 659, _____ (1976). To avoid constitutional difficulties and to properly read this section in its entirety^{4/}, each of the separate prohibitions,

³The term "PAC" is not mentioned or defined in Arizona statutes but is one used in federal law. It has come to be used commonly in reference to state campaign committees not under the control of a specific candidate. When used in connection with Arizona state and local campaign activity the term "PAC" is a colloquial reference to nothing more or less than a "campaign committee" as that term is defined by state law. All requirements imposed on "campaign committees" apply with equal force to "PACs" if they engage in activity intended to influence state or local elections.

^{4/}Golder v. Department of Revenue, State Board of Tax Appeals, 123 Ariz. 260, 265, 599 P.2d 216, _____ (1979) ("[W]ords of a statute must be construed in conjunction with the full text of the statute.")

including the prohibition against "collect[ing] contributions from members of an organization for transmittal to a candidate" must be read as modified by the words "to circumvent the intent of this section."

The mere fact that an individual or campaign committee collects and transmits to a candidate contributions from individuals who also happen to be members of some organization is insufficient, in itself, to violate the prohibition of A.R.S. § 16-905(I)(6).^{5/} Thus, prohibited transmittals are those involving circumvention of the campaign contribution ceilings set forth in A.R.S. § 16-905. With this limitation in mind, we now examine each of the three hypothetical situations you posed.

The first hypothetical is that of an individual or campaign committee collecting checks, depositing them into a single account and then transferring them to a candidate. At the outset, we must note that even if the checks are collected by an individual rather than a campaign committee, the individuals in your first hypothetical have created a campaign committee by their conduct. Statutory references to "campaign committee(s)" are not limited only to campaign committees that have formally registered pursuant to A.R.S. § 16-902. The existence of a campaign committee depends not on whether the committee's status has been formalized pursuant to A.R.S. § 16-902 but on whether there is an "... association or combination of persons organized, conducted or combined for the purpose of influencing the result of any election" A.R.S. § 16-901(1). By virtue of their association for the purpose of raising money to be given to a candidate and their conduct in doing so they have become a campaign committee by operation of law.

While the conduct described in this first hypothetical could be construed as a "transmittal" or conveyance of these contributions to the candidate by the collecting individual or campaign committee, this conduct is more precisely covered by another of the provisions of A.R.S. § 16-905(I)(6) prohibiting an individual or campaign committee from "mak[ing] a contribution to a candidate through another individual or campaign committee . . . to circumvent the intent of this section." The particular facts of such a situation would have to be examined to determine whether a violation of the

^{5/}Lake Havasu City v. Mohave County, 138 Ariz. 552, 557, 675 P.2d 1371, 1376 (App. 1983) ("Statutes must be given a sensible construction which will avoid absurd results.")

contribution limits applicable to any of these individuals or the campaign committee occurred by virtue of this conduct.

For example, a group of individuals who have contributed up to their own limits to a candidate who then each make an additional contribution by giving checks to the ABC Campaign Committee with the understanding and agreement that the campaign committee will then make its own contribution to that candidate would have used the device you describe to violate their contribution limits. An understanding of this type is commonly referred to as the "earmarking" of contributions and, if done to circumvent any of the contribution limitations, violates A.R.S. § 16-905(I)(6).

As addressed below, it is equally possible that the situation you describe could occur in such a way that the contribution limits are not violated.

Because of their decision to join together to raise funds to make a contribution to a candidate, A.R.S. § 16-902 requires that they not receive money or its equivalent or things of value or expend or promise to expend any money on their behalf until a chairman and treasurer have been chosen and an initial registration form has been filed.^{6/} They must comply with the recordkeeping requirements of A.R.S. §§ 16-902, 16-903 and 16-904. In addition, they must file all statements of contributions and expenditures applicable to campaign committees. A.R.S. §§ 16-909, 16-914, 16-915 and 16-915.01. They must heed the limits placed upon contributions to candidates by campaign committees.^{7/} Candidates receiving

^{6/}If the contribution checks in your first hypothetical were collected by an already existing campaign committee that had already filed an initial registration form, then no obligation to register would exist based on this collection of contributions from other individuals. These contributions would, of course, have to be reported by the campaign committee as required by A.R.S. § 16-901, et seq.

^{7/}Only those campaign committees that have been certified by the Secretary of State as having received funds from five hundred or more individuals in amounts of ten dollars or more during a one year period in compliance with A.R.S. § 16-905(G) may contribute up to the higher limits of A.R.S. § 16-905(A)(2) and (B)(2) reserved for campaign committees. All other campaign committees are subject to the lower, individual limits of A.R.S. § 16-905(A)(1) and (B)(2).

contributions from this campaign committee must not exceed their limits on contributions from all campaign committees combined. A.R.S. § 16-905(C).

The second hypothetical you have posed, in our opinion, constitutes a classic example of "bundling" and, depending upon the facts involved, may or may not violate the prohibitions set forth in § 16-905(I)(6). This situation involves an individual or campaign committee having each check individually written by each contributor to the candidate and then forwarding them to a single collecting entity to be delivered at the same time. This type of conveyance would constitute a "transmittal" of these checks. If these checks are collected from members of an organization, the activity falls within the specific language of A.R.S. § 16-905(I)(6) and, if done in order to circumvent any contribution limitations, violates this prohibition.

Even if the contributions are collected from individuals who are not members of an organization but this practice is employed to exceed any of the contribution limits, it amounts to a "similar device to circumvent the intent of [A.R.S. § 16-905]" and is prohibited. One obvious example of an attempt by an organization to circumvent the intent of the law would be the collection of individual contributions from members to be given to the candidate where the candidate is told, or the circumstances make it clear, that all of the individual contributions come from the members of the organization and the organization's campaign committee had either already given the candidate the maximum amount allowed by the applicable paragraph of A.R.S. §§ 16-905(A) or (B) or the candidate had already received the maximum amount of contributions from all campaign committees combined prescribed by A.R.S. § 16-905(C) and this was a device to circumvent that limitation. This conduct would clearly constitute a violation of A.R.S. § 16-905(I)(6).

Your third hypothetical, in which an organization distributes pre-addressed envelopes for personal contributions with the envelopes then being mailed directly to the candidate, does not involve the "collection" of contributions for "transmittal" to the candidate within the precise meaning of those words. However, we must look at the substance of the transaction rather than its mere form. The use of such a device in and of itself is not violative of any provision of A.R.S. § 16-905. But if the organization makes its efforts known to the candidate in order to circumvent the limit to which it is entitled to influence that candidate through its contributions rather than using the distribution of envelopes as a mere convenience for the recipients without any intent to violate the otherwise applicable contribution limitations, then this method would violate A.R.S. § 16-905.

Again, we emphasize that, as with any device, the dispositive fact is whether it is employed to circumvent the contribution limits.

We recognize that the determination of when a device is employed to circumvent the campaign contribution limitations will not always be an easy one. Any determination of whether a violation may exist can only be made on a case-by-case basis after careful investigation and evaluation. The key, in our opinion, however, is whether the device or method is used in order to circumvent any of the A.R.S. § 16-905 campaign contribution limitations.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Corbin", written in a cursive style.

BOB CORBIN
Attorney General

BC:JBS:LTH:chp